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09/745,098	12/20/2000	Carlos Orlando Vilacha Zanoni	286765-00001	8858
7590	09/22/2005		EXAMINER	
David C. Jenkins Eckert Seamans Cherin & Mellott, LLC 600 Grant Street, 44th Floor Pittsburgh, PA 15219			NEWHOUSE, NATHAN JEFFREY	
			ART UNIT	PAPER NUMBER
			3727	

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/745,098
Filing Date: December 20, 2000
Appellant(s): VILACHA ZANONI ET AL.

■ MAILED
SEP 22 2005
Group 3700

David C. Jenkins
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 11, 2005 appealing from the Office action mailed March 24, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2,327,455	PUNTE	8-1943
3,827,594	LEENAARDS	8-1974
2,099,056	FERNNGREN	11-1937

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1 and 7 rejected under 35 U.S.C. 102(b)

Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Punte (US 2,327,455). Punte teaches a crown closure comprising a shell having a top, a curved portion (13), a liner (12) and a skirt (10). The skirt has a plurality of serrations (11) as shown in the figures. The curve portion (13) is "adapted to be the same shape" as the mouth of the bottle (14). See page 2, left column, lines 20-29.

2. Claims 2-6 and 8-12 rejected under 35 U.S.C. 103(a)

Claims 2-6 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Punte (US 2,327,455) in view of Leenaards (US 3,827,594).

Punte discloses the claimed invention except for the radius of the curved portion being about 4 mm, the shell blank having a diameter of about 35.5 mm and the shell having 20 serrations. It would have been obvious to one having ordinary skill in the art

at the time the invention was made to make the crown closure with the radius of the curved portion being about 4 mm, the shell blank having a diameter of about 35.5 mm and the shell having 20 serrations, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Punte discloses the claimed invention except for the radius of the curved portion being about 4 mm, the shell blank having a diameter of about 35.5 mm and the shell having 20 serrations. It would have been an obvious matter of design choice to make the crown closure with the radius of the curved portion being about 4 mm, the shell blank having a diameter of about 35.5 mm and the shell having 20 serrations, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Leenaards teaches a similar crown closure with a radius of a curved portion between the top and skirt being 2 to 5 mm, the diameter of the shell of the crown closure being 20 to 40 mm and the skirt of the crown closure having 21 serrations for a 25 mm diameter crown closure. As Leenaards teaches that these dimensions are known in the crown closure art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize these dimensions to make the crown closure of Punte.

3. Claim 13 rejected under 35 U.S.C. 103(a)

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Punte (US 2,327,455) in view of Ferngren (US 2,099,056).

Punte teaches everything except for the bottle mouth having an upper and lower portion with a fulcrum therebetween.

Ferngren teaches a similar bottle and closure wherein the bottle mouth has an upper and lower portion with a fulcrum therebetween. See figure 1. This arrangement improves the seal between the closure and bottle neck. See page 2, right column, lines 5-17. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the bottle neck of Punte with an upper portion and lower portion with a fulcrum therebetween as taught by Ferngren to improve the seal between the closure and bottle.

(10) Response to Argument

1. Claims 1 and 7 rejected under 35 U.S.C. 102(b)

Appellant argues that Punte teaches a crown closure without a pad or liner. In fact Punte teaches a crown closure without the usual cork or similar sealing pad. Punte does teach a sealing compound (12) on the inner surface of the crown closure. This is considered to be appellant's liner. It is to be noted that liner as defined by Webster's II New Riverside University Dictionary as something used as a lining; and lining is defined as an interior coating or covering.

Appellant argues that Punte does not teach the “curved portion” of the crown closure not having serrations. In support appellant references figures 2-4, figure 2 teaches a “turn” at 9 where the serrations 10 do not extend, but this is pre-application of the crown closure to the bottle. Figure 3 shows the crown closure after applying it to a bottle with deformation 13 but the serrations extend in this portion of the crown closure as shown by figure 4 over the arc 18. It is the examiner’s position that the curved portion 13 is reshaped or deformed to conform perfectly to the sealing surface of the neck of the bottle. See column 2, lines 20-29. With respect to the location of the serrations, reference was made to figure 2 only to show that the serrations stop short of the turn 9 and the top of the crown closure. Therefore there is a portion of the crown closure located above the serrations that is considered to be the “curved portion”. Whether this “curved portion” is the entire portion 13 of Punte or only a portion is not relevant as appellant’s claims only broadly recite a “curved portion” between the skirt and top. For the purposes of meeting the limitations of the claim, the “curved portion” is considered to be the portion of Punte of the reshaped or deformed portion 13 above the serrations and below the top of the crown closure.

2. Claims 2-6 and 8-12 rejected under 35 U.S.C. 103(a)

Appellant argues that there is no suggestion, teaching or motivation to combine the teachings of Punte and Leenaards. In response to appellant’s argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation

to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Leenaards teaches the known dimensions with respect to the radius of the curved portion being about 4mm, the shell blank having a diameter of 35.5mm and the shell having 20 serrations. As set forth in the 35 USC 103 rejection above, Punte teaches everything except for these specifications or dimensions. It would have been obvious to one of ordinary skill in the art to make the crown closure of Punte with these specifications or dimensions as Leenaards teaches that it is known to make crown closures with these dimensions or specifications. Furthermore discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Alternatively, a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

In addition, appellant argues that Punte teaches a padless crown closure while Leenaards teaches a lateral liner and therefore the references cannot be combined. As stated above, Punte teaches the use of a sealing compound which is considered to be appellant's liner. Leenaards is only used to teach that it is known in the crown closure art to make crown closure with the specific dimensions as set forth in the claims. Therefore, as it is known in the art of crown closures to make these closures with the specific dimensions set forth in the claims, it would be obvious to make the crown closure of Punte with these dimensions.

3. Claim 13 rejected under 35 U.S.C. 103(a)

With respect to appellant's arguments concerning the combination of Punte and Ferngren, appellant argues that there is no teaching or suggestion to combine. In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Punte teaches everything except for the bottle mouth having an upper and lower portion with a fulcrum therebetween. Ferngren teaches a bottle and closure wherein the bottle mouth has an upper and lower portion with a fulcrum therebetween. See figure 1. This arrangement improves the seal between the closure and the bottleneck. See page 2, right column, lines 5-17. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the bottle neck of Punte with an upper portion and a lower portion and a fulcrum therebetween as taught by Ferngren to improve the seal between the closure and bottle. Appellant further argues that the closure of Ferngren being made of plastic and the metal crown closure of Punte are two different types of closures and therefore the teachings are not combinable. Ferngren is cited for the teaching of a fulcrum on a glass bottleneck and not the material used to make the closure.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Nathan J. Newhouse
SPE Art Unit 3727

Conferees:

Stephen K. Cronin
Primary Examiner Art Unit 3727

Jes Pascua

Primary Examiner Art Unit 3727